

AMENDED IN ASSEMBLY JULY 13, 2009

AMENDED IN ASSEMBLY JUNE 24, 2009

AMENDED IN SENATE MAY 21, 2009

AMENDED IN SENATE MAY 12, 2009

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 555

Introduced by Senator Kehoe

February 27, 2009

An act to add Section 1240.055 to the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 555, as amended, Kehoe. Eminent Domain Law: conservation easement.

Existing law authorizes various agencies to acquire land for purposes related to conservation. Existing law provides for a conservation easement to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. Existing law establishes procedures for the independent appraisal review of land to be acquired for conservation and establishes a conservation easement registry. Existing law prohibits, with a specified exception, the sale of conservation lands to another owner or the transfer of possession and control of conservation lands to another agency, unless specified actions occur.

The California Constitution permits private property to be taken or damaged for public use only when just compensation is paid. The Eminent Domain Law prescribes how that constitutionally authorized power may be exercised and permits that exercise only for a public use. Existing law prohibits a public entity from commencing an eminent domain proceeding until its governing body has adopted a resolution of necessity that meets specified requirements.

This bill would revise the Eminent Domain Law to establish requirements for acquisition of property subject to a conservation easement. The bill would require the person seeking to acquire the property to give the holder of the conservation easement a notice containing specified information and an opportunity to comment on the acquisition. The bill would require the holder of a conservation easement to provide notice, under certain circumstances and as specified, of the proposed acquisition to each public entity that helped fund the purchase of the conservation easement or that imposed conditions on approval or permitting of a project that were satisfied, in whole or in part, by the conservation easement, and other information, as specified. The bill would require a person seeking to acquire the property subject to a conservation easement to respond to any comments in writing and provide by first-class mail the response to each easement holder or public entity that filed comments. The bill would require the notice of the hearing on the resolution of necessity to be sent to any holder of a conservation easement and public entity, as specified, and to contain information regarding the effect of failing to file a written request to appear and be heard. The bill would require that a resolution of necessity to acquire property subject to a conservation easement refer to specific authority for the acquisition of the property. The bill would specify that the holder of a conservation easement is entitled to compensation under the Eminent Domain Law, as specified.

To the extent that this bill would impose new duties on a local governmental entity, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1240.055 is added to the Code of Civil
2 Procedure, to read:
3 1240.055. (a) As used in this section, the following terms have
4 the following meanings:
5 (1) “Conservation easement” means a conservation easement
6 as defined in Section 815.1 of the Civil Code and recorded as
7 required by Section 815.5 of the Civil Code.
8 (2) “Holder of a conservation easement” means an entity or
9 organization authorized to acquire and hold conservation easements
10 pursuant to Section 815.3 of the Civil Code.
11 (3) “Property appropriated to public use,” as used in Article 6
12 (commencing with Section 1240.510) and Article 7 (commencing
13 with Section 1240.610), includes a conservation easement.
14 (b) A person authorized to acquire property for public use by
15 eminent domain shall exercise the power of eminent domain to
16 acquire property that is subject to a conservation easement only
17 as provided in this section.
18 (c) Not later than 105 days prior to the hearing held pursuant
19 to Section 1245.235, or at the time of the offer made to the owner
20 or owners of record pursuant to Section 7267.2 of the Government
21 Code, whichever occurs earlier, the person seeking to acquire
22 property subject to a conservation easement shall give notice to
23 the holder of a conservation easement as provided in this
24 subdivision.
25 (1) The notice required by subdivision (c) shall be sent by
26 first-class mail and shall state all of the following:
27 (A) A general description, in text or by diagram, of the property
28 subject to a conservation easement that the person proposes to
29 acquire by eminent domain.
30 (B) A description of the public use or improvement that the
31 person is considering for the property subject to a conservation
32 easement.
33 (C) That written comments on the acquisition may be submitted
34 in accordance with paragraph (3) no later than 45 days from the

1 date the person seeking to acquire the property mailed the notice
2 to the holder of the conservation easement.

3 (D) That the holder of the conservation easement, within 15
4 days of receipt of the notice required by subdivision (c), is required,
5 *under certain circumstances*, to do all of the following:

6 (i) Send a copy of the notice by first-class mail to each public
7 entity that provided funds for the purchase of the easement or that
8 imposed conditions on approval or permitting of a project that
9 were satisfied, in whole or in part, by the conservation easement.

10 (ii) Inform the public entity that written comments on the
11 acquisition may be submitted in accordance with paragraph (3).

12 (iii) Notify the person seeking to acquire the property of the
13 name and address of any public entity that was sent a copy of the
14 notice pursuant to this paragraph.

15 (2) (A) The holder of the conservation easement, within 15
16 days of receipt of the notice required by subdivision (c), shall do
17 all of the following:

18 (i) Send a copy of the notice by first-class mail to each public
19 entity that provided funds for the purchase of the easement or that
20 imposed conditions on approval or permitting of a project that
21 were satisfied, in whole or in part, by the conservation easement.

22 (ii) Inform the public entity that written comments on the
23 acquisition may be submitted in accordance with paragraph (3).

24 (iii) Notify the person seeking to acquire the property of the
25 name and address of any public entity that was sent a copy of the
26 notice pursuant to this paragraph.

27 (B) Subparagraph (A) shall apply only if one of the following
28 applies:

29 (i) The holder of the easement is the original grantee of the
30 conservation easement and there is a public entity as described in
31 subparagraph (A).

32 (ii) The holder of the easement has actual knowledge of a public
33 entity as described in subparagraph (A).

34 (iii) Recorded documents evidence the identity of a public entity
35 as described in subparagraph (A).

36 (3) The holder of the conservation easement or the public entity
37 receiving notice, or both, may provide to the person seeking to
38 acquire the property written comments on the acquisition, including
39 identifying any potential conflict between the public use proposed
40 for the property and the purposes and terms of the conservation

1 easement. Written comments on the acquisition may be submitted
2 no later than 45 days from the date the person seeking to acquire
3 the property mailed the notice to the holder of the conservation
4 easement.

5 (d) The person seeking to acquire the property subject to a
6 conservation easement, within 30 days after receipt of written
7 comments from the holder of the conservation easement or from
8 a public entity described in paragraph (2) of subdivision (c), shall
9 respond in writing to the comments. The response to the comments
10 shall be mailed by first-class mail to each easement holder or public
11 entity that filed comments.

12 (e) The notice of the hearing on the resolution of necessity,
13 pursuant to Section 1245.235, shall be sent by first-class mail to
14 any holder of a conservation easement and to any public entity
15 whose name and address are provided as described in paragraph
16 (2) of subdivision (c) and shall state that they have the right to
17 appear and be heard on the matters referred to in Sections 1240.030,
18 1240.510, and 1240.610. The notice shall state that, pursuant to
19 paragraph (3) of subdivision (b) of Section 1245.235, failure to
20 file a written request to appear and be heard within 15 days after
21 the notice was mailed will result in waiver of the right to appear
22 and be heard. The resolution of necessity to acquire property
23 subject to a conservation easement shall refer specifically either
24 to Section 1240.510 or 1240.610 as authority for the acquisition
25 of the property.

26 (f) Property appropriated to public use by a public entity for
27 purposes of Section 1240.650 includes property subject to a
28 conservation easement if either of the following applies:

29 (1) A public entity provided funds, not including the value of
30 a charitable contribution for federal income tax purposes, for the
31 acquisition of that easement.

32 (2) A public entity imposed conditions on approval or permitting
33 of a project that were satisfied, in whole or in part, by the
34 conservation easement.

35 (g) In any eminent domain proceeding to acquire property
36 subject to a conservation easement, the holder of the conservation
37 easement:

38 (1) Shall be named as a defendant, as set forth in Section
39 1250.220.

1 (2) May appear in the proceedings, as set forth in Section
2 1250.230.

3 (3) Shall have all the same rights and obligations as any other
4 defendant in the eminent domain proceeding.

5 (h) The holder of a conservation easement is an owner of
6 property entitled to compensation determined pursuant to Section
7 1260.220 and Chapter 9 (commencing with Section 1263.010).
8 ~~Compensation for the acquisition of property subject to a~~
9 ~~conservation easement shall not be less than the fair market value~~
10 *The total compensation for the acquisition of all interests in*
11 *property encumbered by a conservation easement shall not be less*
12 *than, and shall not exceed, the fair market value of the fee simple*
13 *interest of the property as if it were not encumbered by the*
14 *conservation easement. This subdivision shall not apply if the*
15 *requirements of Section 10261 of the Public Resources Code apply.*

16 (i) This section shall not apply if the requirements of Section
17 1348.3 of the Fish and Game Code apply.

18 SEC. 2. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.